Supreme Court, U.S.
FILED
APR 7 1989
JOSEPH F. SPANIOL, JR.
CLERK

(2)

NO. 88-1396

IN THE

SUPREME COURT OF THE UNITED STATES
October Term, 1988

UNITED STEELWORKERS OF AMERICA,
LOCAL UNION 7533,

Petitioner,

v.

DIXIE ELECTRICAL MANUFACTURING CO.,

Respondent.

ON PETITION FOR
WRIT OF CERTIORARI TO THE
SUPREME COURT OF ALABAMA

BRIEF IN OPPOSITION

JAMES H. STOCK, JR.
(Counsel of Record)
WEINTRAUB, ROBINSON,
WEINTRAUB & STOCK P.C.
2560 One Commerce Square
Memphis, Tennessee 38103
(901) 526-0431

28pp

QUESTION PRESENTED

Whether a state court may find a union in contempt of court and consequently liable for damages arising from the contemptuous violent acts of individual union members in the course of a strike in violation of a state court injunction enjoining violent activity, where one ground proffered for holding the union liable is that the union authorized, supported, and financed the strike and associated picketing?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED.	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES.	iii,iv
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.	2,3
STATEMENT OF THE CASE	4
REASONS FOR DENYING THE WRIT.	11
CONCLUSION.	23
APPENDIX.	App. 1

TABLE OF AUTHORITIES

Cases — Page

Milk Wagon Drivers' Union Local 1753 v. Meadowmoor Dairies, Inc., 312 U.S. 287 (1941) 14

International Union, UAW Local 232 v. Wisconsin Employment Relations Board, 336 U.S. 245 (1949) 20,21

Teamsters Local 20 v. Morton, 377 U.S. 252 (1964) 19,20

United Automobile Workers v. Russell, 356 U.S. 634 (1958) 14

United Mine Workers v. Gibbs, 383 U.S. 715 (1966) 15,16

Farmer v. United Brotherhood of Carpenters & Joinders, Local 25, 430 U.S. 290 (1977) 17.18

Sears, Roebuck & Co. v. San Diego County District Council of Carpenters, 436 U.S. 180 (1978) 19

Legislative Histories:

Conference Committee House Report No. 510, 80th Cong. 2d Sess. 1, reprinted in, 1947 U.S. Code Cong. & Ad. News 1135. 16

TABLE OF AUTHORITIES - Continued

Statutes and Regulations

Section 6 of the Norris-LaGuardia Act, 29 U.S.C. § 106 10,12,15

Section 7 of the National Labor Relations Act, 29 U.S.C. § 157. 2,9,13,22

Section 101 of the Labor Management Relations Act, 29 U.S.C. § 152(13). 12,13

Section 301 of the Labor Management Relations Act 29 U.S.C. § 185. 22

Section 303 of the Labor Management Relations Act, 29 U.S.C. § 187 . . 3,22

IN THE

SUPREME COURT OF THE UNITED STATES
October Term, 1988

NO. 88-1396

UNITED STEELWORKERS OF AMERICA,
LOCAL UNION 7533,

Petitioner,

v.

DIXIE ELECTRICAL MANUFACTURING CO.,

Respondent.

ON PETITION FOR
WRIT OF CERTIORARI TO THE
SUPREME COURT OF ALABAMA

BRIEF IN OPPOSITION

Respondent, Dixie Electrical Manufacturing Company, hereby files its Brief in Opposition to the Petition for Writ of Certiorari filed by Petitioner United Steelworkers of America, Local 7533

requesting this Court to review the judgment of the Supreme Court of Alabama in Ex parte United Steelworkers of America, Local Union 7533, et al, Case No. 86-1638, entered on July 1, 1988.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 6 of the Norris-LaGuardia Act, 29 U.S.C. § 106, provides:

> No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

Section 7 of the National Labor Relations Act, 29 U.S.C. § 157 provides in pertinent part:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Section 303 of the Labor Management Relations Act, 29 U.S.C. § 303 provides:

> (a) It shall be unlawful, for the purpose of this section only, in an industry or activity affecting commerce, for any labor organization to engage in any activity or conduct defined as an unfair labor practice in section 158(b)(4) of this title.
>
> (b) Whoever shall be injured in his business or property by reason [of] any violation of subsection (a) of this section may sue therefor in any district court of the United States subject to the limitations and provisions of section 185 of this title without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

STATEMENT OF THE CASE

In this case, the Alabama state courts found Petitioner, Local 7533 of the United Steelworkers of America, AFL-CIO-CLC ("the Local"), guilty of contempt and required the Local to pay damages to Respondent, Dixie Electrical Manufacturing Company ("the Company"), after several union members engaged in violent conduct which caused property damage in contravention of a standing injunction enjoining such activity, during a strike by the union. The Alabama state courts ruled that the Local could be held responsible for the acts of its members on the basis of the following:

> Having examined the record, we find that it does disclose evidence that the union itself authorized and participated in the unlawful acts of individual members.
>
> Although the president of the local union was present on several occasions at the strike site, and there was evidence that he had participated in

> acts prohibited by the temporary injunction, nevertheless, he was exonerated when the trial court granted a directed verdict in his favor.
>
> On the other hand, the evidence did disclose that the union members unanimously voted to strike; the union itself maintained pickets at the plant entrance; the union maintained a tent for the strikers as protection against inclement weather; the union provided picket captains for the picket lines; the union held regular strike meetings; and the union provided strike funds, furnished by the international union, to assist with the personal needs of striking local members in need. [App. 8a].[1]

The strike was an economic strike, conducted after the expiration of a collective bargaining agreement between the Local and the Company. Shortly after the strike began, the Company filed a Complaint in the Jefferson County, Alabama Circuit Court, alleging a number of acts by strikers that threatened the property or persons of the Company and its personnel. The

---

[1]Citations to the Alabama state court decisions shall refer to the Petitioner's Appendix as "App. _____"

complaint sought damages and injunctive relief against fifteen (15) named individuals, additional unnamed individuals, the Local, and the International Union.

The complaint was accompanied by an application for a temporary restraining order and a petition for a preliminary injunction, which also sought an end to the violent and threatening conduct alleged in the complaint. A temporary restraining order was issued by the trial court on the day of application and eleven (11) days later a preliminary injunction was issued. The preliminary injunction enjoined, among other things, acts of violence and the spreading of tacks on or near the Company's property.[2]

---

[2]The preliminary injunction prohibited the following acts:

> (a) Picketing in numbers greater than three (3) within five hundred (500) feet of any given gate at any given time.

Approximately one month after the preliminary injunction was issued, the Company moved to have the Local, the International, and a number of individual union-member defendants found in contempt of

---

[2](continued)

> (b) Threatening any person with violence or bodily harm if such person enters or leaves the premises occupied by the Plaintiff or does any business with Plaintiff.
>
> (c) Engaging in any acts of violence of any kind against any person entering or leaving the premises occupied by the Plaintiff, doing any business of any kind with the Plaintiff or performing services for and on behalf of the Plaintiff.
>
> (d) Trespassing on the premises occupied by the Plaintiff.
>
> (e) Carrying clubs, guns, or other dangerous instruments on the picket line at the Plaintiff's premises.
>
> (f) Spreading tacks on or near the entrances to the Plaintiff's premises.
>
> (g) Trespassing on the premises of the employees of the Plaintiff.
>
> (h) Harassing the employees of the Plaintiff and/or their families either at the premises of the Plaintiff or at any other place. [Record in Supreme Court of Alabama at 37-39.]

the temporary restraining order and preliminary injunction.

The trial court held a four day hearing on the contempt allegations. Several individual union members and the Local were found guilty of contempt and ordered to pay damages to the Company on the basis of the following findings:

> Defendant, Calvin V. Smith, is found guilty of one violation of the Court's order and is sentenced to two days in the Jefferson County jail, provided, however, that the sentence is suspended on the condition that Mr. Smith not be found guilty of any additional violations arising after August 14, 1987, of any order of this Court. Defendant, Verbon S. Osborn, is found guilty of one violation of the Court's order and is sentenced to two days in the Jefferson County jail, provided, however, that the sentence is suspended on the condition that Mr. Osborn not be found guilty of any additional violations arising after August 14, 1987, of any order of this Court. Defendant, William F. Freeman, Jr., is found guilty of one violation of the Court's order and is sentenced to five days in the Jefferson County jail, provided, however, that the sentence is suspended on the condition that Mr. Freeman not be found guilty of any additional violations arising after August 14, 1987, of any order of this Court.

> Defendant, United Steelworkers of America, Local 7533, is found guilty of participating in, through the actions of its officers and members, and condoning the violations of the Court's orders which resulted in damages to tires, a broken window and certain corporate equipment inside the office in which the window was broken. The Court finds the damages to the tires to be FIVE HUNDRED THIRTY AND 58/100 DOLLARS ($530.58), the damages to one broken window to be ONE HUNDRED ONE AND 80/100 DOLLARS ($101.80), and the damage to the corporate equipment to be SIX HUNDRED NINETY-THREE AND 33/100 DOLLARS ($693.33). The Court notes that other specific amounts of damage have been determined but restitution has been ordered by the District Court and these amounts are not included here. The Court orders the Defendant, United Steelworkers of America, Local 7533, to pay, to the Plaintiff within 30 days of the date of this Order, the amount of ONE THOUSAND THREE HUNDRED TWENTYFIVE AND 71/100 ($1,325.71). [Petitioner's App. 12-13a].

The Local appealed the contempt finding and the award of damages to the Supreme Court of Alabama on the ground that the Circuit Court's ruling tended to chill conduct protected by § 7 of the National Labor Relations Act ("NLRA"). The Local argued that liability should only be imposed

upon a union in cases where the Local actually participated in, authorized, or ratified the violent conduct.[3]

The Supreme Court of Alabama rejected the Local's argument and upheld the Circuit Court's application of common law agency principles in finding the Local liable for the violent acts of its members. The Alabama Supreme Court did find evidence in the record that the Local Union President had participated in acts prohibited by the temporary injunction, even though "exonerated when the trial court granted a directed verdict in his favor."[4]

Moreover, the Alabama Supreme Court found that liability for damage caused by the unlawful activity of union members was properly imposed on the Local stating:

---

[3]This is the standard of liability recognized in federal court actions under § 6 of the Norris LaGuardia Act, 29 U.S.C. §106.

[4]App.8a.

> . . .the evidence did disclose that the union members unanimously voted to strike; the union maintained pickets at the plant entrance; the union maintained a tent for the strikers as protection against inclement weather; the union provided picket captains for the picket lines; the union held regular strike meetings; and the union provided strike funds, furnished by the international union, to assist with the personal needs of striking local members in need. [Petitioner's App. 8a].

REASONS FOR DENYING THE WRIT

This case is indistinguishable from the long line of state court cases which properly apply common law agency principles to determine the liability of unions for the violent and destructive acts of its members. Contrary to the position advanced by Petitioner, this case presents no novel issue of federal law which necessitates review by this Court. Rather, the Supreme Court of Alabama's decision in this case is consistent with its own precedent and that of this Court, in upholding the application of agency principles to determine union

liability in contempt proceedings for a violation of a state court injunction enjoining strike related violence.

Any lack of uniformity in state court adjudications as to the standard of union liability in such situations is merely a reflection of variations in state common law agency principles. The Petitioner apparently seeks to have this Court federalize the standard of liability in state court actions which would effectively make § 6 of the Norris-LaGuardia Act applicable to state court proceedings, a result clearly rejected by Congress when it enacted the Labor Management Relations Act (LMRA).[5]

---

[5]Congress expressly rejected extending the Norris-LaGuardia explicit authorization, participation or ratification standard of liability to actions brought pursuant to the Labor Management Relations Act:

> In determining whether any person is acting as an "agent" of another person so as to make such other person responsible

Any judicially created federal liability rule would in effect: (1) override the legislative judgment that state courts are not to be bound by stringent liability rules in such cases, and, (2) upset the delicate balance of federalism existing in the labor relations area.

In prior decisions, this Court has attempted to balance the § 7 rights of workers with the interest of the states in protecting commercial enterprises and individuals from tortious conduct arising out of labor disputes, and has recognized that § 7 was not intended to preempt state courts from awarding damages and enjoining violence incident to protected activity.

---

[5](Continued)

> for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

29 U.S.C. § 152(13).

See e.g., United Automobile Workers v. Russell, 356 U.S. 634, 640 (1958) (". . .the union's activity in this case clearly was not protected by federal law. Indeed the strike was conducted in such a manner that it could have been enjoined by Alabama courts.")

It is also well-established that states, when imposing liability for violent acts arising out of labor disputes, may adopt and apply common law agency principles. In Milk Wagon Drivers' Union v. Meadowmoor Dairies, Inc., 312 U.S. 287, 295 (1941), this Court acknowledged that a state may find a union liable for strike related violence committed by individual members even without a finding of participation, ratification, or authorization by union officials:

> It is true of a union as of an employer that it may be responsible for acts which it has not expressly authorized or which might not be attributable to it on strict application of the rules of respondeat superior.

The creation of a federal common-law rule which mandates the adoption by state courts of a "ratification, participation, or authorization" standard of liability in state court actions for injunctive relief and damages would have the effect of extending the standards embodied in § 6 of the Norris-LaGuardia Act to state courts, a result previously rejected by this Court and by Congress. In United Mineworkers v. Gibbs, 383 U.S. 715, 736 (1966), this Court noted that with the passage of the LMRA, the responsibility of a union for the acts of its members and officers was to be measured by reference to ordinary agency principles rather than the more stringent standards of § 6 of the Norris-LaGuardia Act:

> . . .Congress passed the Labor Management Relations Act, which expressly provides that for the purposes of that statute, including

> § 303, the responsibility of a union for the acts of its members and officers is to be measured by reference to ordinary doctrines of agency, rather than the more stringent standards of § 6. Yet although the legislative history indicates that Congress was well aware of the Carpenters decision, it did not repeal § 6 outright, but left it applicable to cases not arising under the new Act.

Cf. Conf. Comm. H. Rep. No. 510, 80th Cong. 2d Sess. 1, reprinted in, 1947 U.S. Code Cong. & Ad. News 1135, 1173 ("This provision [§ 6] in the Norris-LaGuardia Act was made inapplicable under the House bill. Section 301(e) of the conference agreement provides that for the purposes of section 301 in determining whether any person is acting as an agent of another so as to make such other person responsible for his actions, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.") (emphasis supplied).

Although a union certainly may engage in protected activity to pressure an employer to accede to its bargaining demands, incidental violence growing out of a strike which results in injury to property rights, as in the instant case, implicates compelling state interests which are

co-extensive with the federally protected concerted activity. See, e.g., Farmer v. United Brotherhood of Carpenters & Joinders, Local 25, 430 U.S. 290, 299-304 (1977) (Similar reasoning underlies the exception to the pre-emption rule in cases involving violent tortious activity. Nothing in the federal labor statutes protects or immunizes from state action violence or the threat of violence in a labor dispute, [citations omitted] and thus there is no risk that state damage actions will fetter the exercise of rights protected by the NLRA. On the other hand, our cases consistently have recognized the historic state interest in "such traditionally local matters as public safety and order and the use of streets and highways" . . .state court actions to redress injuries caused by violence or threats of violence are consistent with effective administration of the federal scheme: such actions can be

adjudicated without regard to the merits of the underlying labor controversy. [citation omitted]. . . .The occurrence of the abusive conduct, with which the state tort action is concerned, . . .suggests a potential for interference with the federal scheme of regulation. Viewed, however, in light of the discrete concerns of the federal scheme and the state tort law, that potential for interference is insufficient to counterbalance the legitimate and substantial interest of the State in protecting its citizens." [emphasis supplied]).

State court actions to enjoin incidental violence and provide redress for property damage inflicted upon employers and innocent third parties simply does not discourage a union or its members from engaging in federally protected conduct.

For example, in Sears, Roebuck & Co. v. San Diego County District Council of Carpenters, 436 U.S. 180 (1978) the Court rejected the union's argument that an employer's state court action to enjoin continuing trespass by the union was preempted because of the possibility that such an action might interfere with protected activity. There the court stated:

> . . .Nevertheless, permitting state courts to evaluate the merits of an argument that certain trespassory activity is protected does not create an unacceptable risk of interference with conduct which the Board, and a court reviewing the Board's decision, would find protected. For while there are unquestionably examples of trespassory union activity in which the question whether it is protected is fairly debatable, experience under the Act teaches that such situations are rare and that a trespass is far more likely to be unprotected than protected.

Id. at 205. See e.g., Teamsters v. Morton, 377 U.S. 252, 257 (1964) ("'[W]e have allowed the States to grant compensation for

the consequences, as defined by the traditional law of torts, of conduct marked by violence and imminent threats to the public order. [citations omitted]. . .. State jurisdiction has prevailed in these situations because the compelling state interest, in the scheme of our federalism, in the maintenance of domestic peace is not overridden in the absence of clearly expressed congressional direction. . .'"); International Union v. Wisconsin Employment Relations Board, 336 U.S. 245, 252-53 (1949) ("Congress has not seen fit in either of these Acts to declare either a general policy or to state specific rules as to their effects on state regulation of various phases of labor relations over which the several states traditionally have exercised control. [citations omitted]. However, as to coercive tactics in labor controversies, we have said of the National Labor Relations

Act what is equally true of the Labor Management Act of 1947, that 'Congress designedly left open an area for state control' and that the 'intention of Congress to exclude States from exercising their police power must be clearly manifested.'" [citation omitted])

As a practical matter, a federal liability standard for state court actions would unfairly shift the economic consequences of unprotected conduct to employers and innocent third parties. As a corollary, such a result would have the effect of encouraging union irresponsibility in the management of strike activity by removing incentives which operate to minimize incidental violence and property damage. The inequity of placing a heightened evidentiary burden on employers and innocent third parties is underscored by the fact that only the union is in a position to regulate the activities of its

members during a strike. In adopting agency principles, state courts have attempted to deter violent and destructive conduct by imposing liability on the only party capable of actually regulating the activities of union members.

Put simply, Congress through the National Labor Relations Act, as amended, and this Court, through its many adjudications of this issue, have achieved a balancing of federal and state interests in the area of labor relations. Specifically, the LMRA contains a congressional declaration that the heightened liability standard of the Norris-LaGuardia ACt was not to apply in §§ 301 or 303 actions. If, as the Petitioner asserts, the imposition of the doctrine of respondeat superior by state courts inadvertently chills activity protected under § 7, it is up to Congress to re-examine the federal interest in light of this perceived infringement.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari to the Supreme Court of Alabama should be denied.

Respectfully submitted,

JAMES H. STOCK, JR.
(Counsel of Record)

WEINTRAUB, ROBINSON, WEINTRAUB
& STOCK P.C.
Suite 2560, One Commerce Square
Memphis, Tennessee 38103
(901) 526-0431

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

JOSEPH F. SPANIOL, JR.
CLERK OF THE COURT

March 13, 1989

AREA CODE 202
479 3011

Mr. James H. Stock, Jr.
Suite 2560
One Commerce Square
Memphis, TN 38103

Re: United Steelworkers of America, Local Union 7533 v. Dixie Electrical Manufacturing Co., No. 88-1396

Dear Mr. Stock:

Your request of March 10, 1989 for an extension of time within which to file a brief in opposition to the petition for a writ of certiorari in the above-entitled case has been granted; the time has been extended to and including April 10, 1989.

Very truly yours,

JOSEPH F. SPANIOL, Jr., Clerk

By Francis J. Lorson

Francis J. Lorson
Chief Deputy Clerk

lg
cc: Bernard Kleiman
Glen Marshall Conner
Robert M. Weinberg, Esq.